

Rejection Under 35 U.S.C. §103(a)

Claims 1, 33, 36 and 50 are rejected under 35 U.S.C. §103(a) as obvious in view of Chan et al. Specifically, the Examiner states:

The human eek polynucleotide was identified by Chan et al., by Southern and Northern blot and a partial sequence provided. Chan et al does not, as Applicant states, provide the full sequence of the polypeptide. However, it would have been obvious to one of ordinary skill in the art to sequence the polynucleotide and from that sequence obtain the sequence of the eek polypeptide, which comprises instant SEQ ID NO: 66.

Applicants respectfully traverse. The Examiner states that Chan et al identified the human eek polynucleotide and provided a partial sequence. While Chan et al does state that partial human genomic DNAs encoding eek were identified, Chan failed to disclose any nucleotide sequence data. The only sequence data provided in Chan is a partial amino acid sequence for eek. However, disclosure of a partial amino acid sequence does not render obvious to one of ordinary skill in the art the sequence of the corresponding full-length polynucleotide. *See In re Deuel*, 51 F.3d 1552 (Fed. Cir. 1995).

In *In re Deuel*, the Federal Circuit rejected the same argument being made by the Examiner in this case, namely that that it would have been obvious to one of ordinary skill in the art to sequence the corresponding full-length polynucleotide in view of the disclosed partial amino acid sequence. In rejecting this argument, the Federal Circuit explained: “a prior art disclosure of a partial amino acid sequence does not necessarily render particular DNA molecules encoding the protein obvious because the redundancy of the genetic code permits one to hypothesize an enormous number of DNA sequences coding for the protein” *Id.*

The same is true here where Chan disclosed only 21 of the 515 amino acids for *eek*. Although the general idea of the polynucleotide sequence, its function and general chemical nature may have been obvious, as was the case in *In re Deuel*, the precise polynucleotide sequence of the full-length eek gene would not have been obvious in view of the prior art.

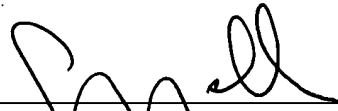
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Accordingly, since the sequence of the full length polynucleotide for *EEK* is not *prima facie* obvious in view of the limited disclosure in Chan, then by logical extension, the claimed full-length amino acid sequence which is deduced from the polynucleotide sequence cannot be *prima facie* obvious.

In view of the foregoing, Applicants respectfully requests withdrawal of this ground of rejection and submit that the claims are in condition for allowance.

Respectfully submitted,



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